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CURRENT TOPICS

Sir Arthur Croke Morgan

SIR ARTHUR CROKE MORGAN, who died on 18th August at the age of 77, rendered outstanding service to The Law Society as member of the Council, treasurer, vice-president and president between 1925 and 1945. His name is linked with the smooth working of the return of servicemen to the solicitors' profession, and with the work leading to the establishment of the legal aid scheme. From 1915 to 1951 he was solicitor to the Honourable Society of the Middle Temple. After reading law under Dr. J. B. Moyle at New College, Oxford, he was admitted a solicitor in 1903 and in 1905 became a partner in Messrs. Park Nelson & Co. In the 1914-18 war he served with the anti-aircraft branch of the Royal Garrison Artillery. The legal profession mourns the loss of a loyal and gifted servant.

Order for Inspection of Property

AN object lesson in what is meant by the fashionable term "robust" as applied to procedural matters was surely given by ROXBURGH, J., in *Penfold* v. *Pearlberg* [1955] 3 All E.R. 120. Asked to make an order under R.S.C., Ord. 50, r. 3, for the inspection of leasehold property in an action for specific performance of a contract to buy it, the learned judge was faced with the objection that the property was under requisition by the local authority, so that it was not in the power of the plaintiff to allow inspection. He was pressed, it appears, with the suggestion of Scrutton and Ridley, JJ., sitting (in *Coomes* v. *Hayward* [1913] 1 K.B. 150) in the Divisional Court on appeal from a county court judge's order for inspection of property of which the sole defendant was tenant in common with other persons, that the proper course was to add the other persons concerned (in the recent case the local authority) as parties to the action. Such a course seemed to Roxburgh, J., a pure waste of money. His lordship ordered inspection subject to the condition that the requisitioning authority gave consent. Only if the authority refused consent would it be necessary to add it as a party. We must particularly observe that before making his order the learned judge satisfied himself that the relevant rule could be so construed—that, where it was the subject matter of the action which was to be inspected, the later words of the rule did not restrict inspection to land or buildings in the possession of a party. This (if we may say so) commendable interpretation nevertheless seems to go further than the Divisional Court was prepared to go in 1912 when dealing with a county court rule in similar terms. But the judges of those days probably associated robustness only with corporeal conditions.

Young Lawyers

IN answer to a letter in the *Observer* contending that it is cheaper to become a solicitor than a barrister, "A Student of Gray's Inn," replying in the issue of 14th August, wrote that a young articled clerk may have to pay up to 400 guineas article fees, will have to keep himself for five years (or three if he holds a university degree), and will still

CONTENTS

O. S. U.
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require a handsome capital if he is ever to practise on his own. The demand for this financial outlay, he continued, is only very slowly disappearing, and a paid articled clerk is still rare. Of the Bar, he wrote that it is quickly becoming the preserve of the well-to-do, because it is impossible to withstand the lean years following call without a healthy bank balance. He added that the Bar was once the most democratic of professions but now " you may be fairly certain that any young practising barrister you meet has come from a well-to-do home." There are so many superficial generalisations in this letter that it is sufficient for those who know what the conditions are to-day to dismiss them as largely incorrect. The learned professions were always the honourable goals of attainment for children of the well-to-do, but to-day there are fewer well-to-do and more state-aided and other scholarships than ever before. Many practising lawyers to-day owe their present position at least as much to their willingness to undertake additional work to support themselves while building a practice, as to their parents' help. Let it not be said that there are not as many young men to-day as there were twenty-years ago who, irrespective of their means, respond to the call of the law as a vocation, and have the courage and tenacity to gain a foothold in the profession and, not infrequently, to rise to the top.

Report of the Commissioners of Prisons

A SURVEY of persons under twenty-one, serving sentences of three months' imprisonment or more at Wormwood Scrubbs before being transferred to an appropriate centre, shows, according to the Report of the Commissioners of Prisons for 1954, that they never give poverty as an excuse for their crimes. Most of them, the prison governor says, claim to live in good houses, generally now council houses, and to be earning good wages. He concludes: " Too many young prisoners reach their eighteenth birthday without having been taught the elementary principles of right and wrong, and tend to grow up thinking that the only thing that matters is to avoid being found out." It is encouraging to learn from the same report that the prison population fell by 1,800 to 21,200 during the year, although there were still over 3,200 men at the end of the year sleeping three in a cell in local prisons. This latter problem was due to the continuing rise in the number of men sentenced to preventive detention. These points, and some others in the report, have attracted the attention of " Richard Roe " this week, and his entertaining comments appear on p. 596, *post*.

Requisitioned Land: Compensation for Reinstatement

FOR seven years before 1953 the Ministry of Works restored requisitioned land before handing it back. In January, 1953, this programme of restoration was discontinued, and " terminal compensation " was substituted. It was then announced that if this was insufficient to cover the cost of clearing defence works away, additional assistance woulp be given in cases where the Ministers concerned were " fully satisfied that restoration is really essential in the national interest." Enquiries by the County Councils Association from some eleven counties have disclosed that the compensation paid has often been insufficient to cover the cost of restoration, with the result that owners have kept the money and left old buildings and large areas of concrete roads and foundations untouched. Weeds have grown over the remaining ground, and the land has become useless for any normal purpose. The County Councils Association, it was announced on 8th August, were intending to protest in a letter to the Ministry of Housing and Local Government as to the working of the present scheme, and were to submit proposals for a new scheme. This is that, in future cases where land formerly used for temporary defence works is released by Government departments and it is in the interests of good planning that it should be restored to its former state, the departments should assume responsibility for such restoration, either by carrying out the work themselves or by ensuring that it is carried out by the owner on payment to him of compensation which should be based on the actual cost of reinstatement.

THE NON-COHABITATION CLAUSE

ONE of the provisions that may be included in an order made by a magistrates' court under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, is the provision that an applicant be no longer bound to cohabit with the defendant (1895 Act, s. 5). This provision while in force will have the effect in all respects of a decree of judicial separation on the ground of cruelty. In some cases (e.g., persistent cruelty, adultery) it may be proper for a solicitor appearing for a successful wife to intimate to the bench that such a provision be included in the order, but in no case is such provision to be included as a matter of course.

Where desertion is in issue, the advocate must be particularly careful, for the inclusion of the clause may have the effect of terminating any desertion (*Dodd* v. *Dodd* (1906), 22 T.L.R. 484; 50 SOL. J. 528; *Harriman* v. *Harriman* (1909), 25 T.L.R. 291; 53 SOL. J. 265). In the latter case, a decision of the Court of Appeal, it was held that the making of a separation order put an end to the desertion. The case dealt with several aspects of divorce law and the grounds as then necessary for divorce, and the report is too lengthy to deal with in detail, but Cozens-Hardy, M.R., said that the effect of a decree of judicial separation on the ground of cruelty (which effect a magistrates' separation order is deemed to have) has the same force and the same consequences as a divorce *a mensa et thoro* under the old law, and it makes a wife a *feme sole* so far as property and contract and suing and being sued are concerned. He was not satisfied that s. 5 ought not to be read so as to limit the non-cohabitation provision to cases of cruelty as distinct from mere desertion, but, however that may be, he felt strongly that the magistrates ought not to treat it as a matter of course, a mere matter of form, to insert that provision. Kennedy, L.J., said: " The Summary Jurisdiction (Married Women) Act bestows upon a married woman a method of relief against her husband by procedure in a court of summary jurisdiction in particular cases of marital misconduct on his part . . . Section 5 sets forth four distinct provisions, all or any of which may be included in the order, the Legislature then entrusting the court of summary jurisdiction with the exercise of a judicial discretion to fit the order, in regard to these provisions, to the nature and need of the particular case alleged and proved . . . The history of this provision, the language of the context, the very nature of the protection which the provision gives and the enactment that it shall have the effect of a decree of judicial separation on the ground of cruelty, unite in showing that the discretion given by Parliament to the court of summary jurisdiction . . . is not rightly exercised if this non-cohabitation provision is inserted in the order made for the wife's relief, except where the court has been

satisfied by evidence that the future safety of the wife is in peril." Farwell, L.J., said that it is only reasonable, when an Act specifies various wrongful acts and also specifies different heads of relief, to construe it as intending to give to the magistrates jurisdiction to grant such forms of relief only as may be appropriate to the evidence in each case. In *Dodd* v. *Dodd*, the Divisional Court held that a non-cohabitation or separation order has the effect of preventing a continuance of legal desertion and intimated that justices should not grant such orders where the wife's safety does not require it and where a maintenance order is sufficient.

Where there has been merely neglect to maintain without any question of violence, a non-cohabitation clause should not be inserted in the order. In *Smith* v. *Smith* (1930), 47 T.L.R. 9; 74 SOL. J. 755, Lord Merrivale, P., said: "The justices, assuming one of the most difficult jurisdictions that can be exercised, that of dealing with the matrimonial relations of two parties who have differences, decree a judicial separation and break up the home. It is only necessary to call attention to an occurrence of this kind to see what a mistaken proceeding it is and how prolific of mischief it can be in the marital relations of people who find themselves inclined to resort to the justices in their limited jurisdiction." In *Sayers* v. *Sayers* (1929), 93 J.P. 72, a non-cohabitation clause was included in an order for desertion and the Divisional Court struck it out on appeal, stating that it may be necessary in cases of cruelty, but that in cases of desertion it cannot be.

It will be realised that the improper insertion of the clause may have serious repercussions and cause unnecessary inconvenience. In *Mackenzie* v. *Mackenzie* (1940), 56 T.L.R. 300; 84 SOL. J. 113, a wife had petitioned for divorce on the ground of desertion. In 1934 she had obtained a magistrates' order on the ground that her husband had failed to maintain her. The order was in the usual printed form and contained the non-cohabitation clause, although it was not applicable to the relief sought. It was held, on appeal, that the clause could not be disregarded, even though it was left in by inadvertence, but was effective to prevent the petitioner from obtaining a divorce on the desertion alleged. Slesser, L.J., said that the order was an effective order which regulated the relations between the parties and which had never been varied. In those circumstances it would be wrong to treat the order as a nullity merely because it had not been treated by the parties as effective in any way. The court laid stress on the fact that the order had never been amended, and it would seem that where such an order exists the proper procedure to adopt is to return to the magistrates' court to have it amended by deletion of the non-cohabitation clause. In *Boulton* v. *Boulton* (1922), 38 T.L.R. 611, a wife was successful in having the clause struck out so that the statutory period of desertion could run for the purpose of securing a divorce. In *Cohen* v. *Cohen* (1947), 63 T.L.R. 423, it was held that the clause left in the magistrates' order by mistake was a nullity and did not operate to prevent the wife from being in desertion. The order was made in 1937 on the ground of wilful neglect to provide reasonable maintenance, and the minute of adjudication forming part of the court's record showed that no separation order was intended. In 1944, the order was corrected by the magistrates' court and the husband subsequently petitioned for divorce. The commissioner held that, owing to the currency of the magistrates' order, including the non-cohabitation clause, there had been no desertion by the wife for the three years immediately preceding presentation of the petition, and the husband appealed. In his judgment, Somervell, L.J., said that he reserved his judgment as to what the result would have been if anyone had relied or acted on the order as first drawn up. Hodson, J., as he then was, said that the commissioner did not apply his mind to the vital question whether there was a separation order at all, and that the clause was included by mistake. Lynskey, J., agreed, but said he desired not to be understood as saying that in every case where an order is amended by striking out a non-cohabitation clause the result will be the same. The essential difference between *Mackenzie* and *Cohen* seems to be that, in the former, the magistrates' court had made the order of separation, albeit inadvertently and erroneously, whilst in the latter, quite clearly, a maintenance order only had been made.

In *Thory* v. *Thory* (1948), 64 T.L.R. 227; 92 SOL. J. 155, Jones, J., held that, since the clause should never have been inserted in the order, the clause was never effective and its deletion should date from the date when the original order was made. The order containing the non-cohabitation clause was made in 1939 on the ground of wilful neglect to maintain. In 1947, the husband petitioned for divorce on the ground of his wife's desertion and also applied to the magistrates for the non-cohabitation clause to be deleted, which application was refused. He obtained leave to appeal against the original order, out of time, and the Divisional Court held that there was no ground for the inclusion of the clause in the order and directed it be deleted. It is suggested, with respect, that the decision of Jones, J., should be treated with some reserve, for he went much further than the Divisional Court, which specifically refrained from indicating the date on which the decision became effective, and neither the Divisional Court nor the learned judge decided what the result would have been if the non-cohabitation clause had been acted or relied upon. Furthermore, in *Mackenzie* v. *Mackenzie*, *supra*, the Court of Appeal decided that it could not disregard the clause even though it was left in the order by inadvertence, but in *Thory* v. *Thory* Jones, J., disregarded it even though it appears to have been included by the justices in the exercise of their discretion (although without justification), for they adhered to it on the application for variation.

As has been shown, a justices' order containing the clause can be varied by deleting the clause on cause being shown. In *Haynes* v. *Haynes* [1952] 2 T.L.R. 313; 96 SOL. J. 563, the Divisional Court dismissed a husband's appeal against a finding of persistent cruelty and upheld the justices' decision to include the non-cohabitation clause in the order, although it was a case which was near the line. Lord Merriman, P., said that although the order would not be modified by eliminating the clause, he thought it highly desirable that it should be understood by everybody that the door need not necessarily be bolted and barred for ever. He referred to his judgment in *Hutchison* v. *Hutchison* [1951] W.N. 296, when he said: "I do not take the view that as a matter of degree the circumstances of this particular case entitle the wife to sit down on her order for all time, and refuse ever to consider approaches, however humble, however contrite, however real, on the part of the husband to resume this all-too-brief married life. But they must be approaches which are made with a very clear realisation that he has learned his lesson, and with the very clear realisation that if that sort of conduct is repeated the wife will have a clear-cut case for reviving the charge of cruelty which she established before condonation." His lordship recognised that, so long as the non-cohabitation clause stood, the wife could resist any overtures, but it was open to the husband, if he had learned his lesson and was prepared to realise that it was his fault that the marriage

had been broken and the separation order made, to approach the wife and the court in that frame of mind, and his lordship knew of no legal impediment to an application to the court under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, for a variation of the order by eliminating the non-cohabitation clause. Presumably, the way is then open for the husband to make genuine offers to return to cohabitation which, if unreasonably refused, would entitle him to apply for the discharge of the order. This seems to be recognised by *Bottoms* v. *Bottoms* [1951] 2 T.L.R. 365; 95 SOL. J. 548. There seems to be no reason why a wife who has obtained a maintenance order should not apply for that to be varied by including a non-cohabitation clause on fresh evidence of violence.

J. V. R.

SHARING THE BEDROOM

IN 1945 the case of *Neale* v. *Del Soto* [1945] K.B. 144 produced a new and prolific gloss on the words "let as a separate dwelling" found in s. 12 (2) of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, the effect of which was held to exclude the operation of the Rent Acts where the tenant shared living accommodation with either his landlord or another tenant. Despite the fact that the doctrine failed to appear until the Rent Restrictions Acts had been in operation for thirty years it has quickly gathered round itself an impressive cloak of judicial interpretation. Within three years the Court of Appeal was able to say:—

> "This court cannot consider whether *Neale* v. *Del Soto* and its satellite cases were properly decided. It can only inquire what they in fact decided. About this there can be little doubt. The gist of these decisions is that where what the landlord under the agreement of tenancy parts with to the tenant consists of two things (*a*) exclusive possession of a room or rooms, plus (*b*) use, jointly with someone else, of another living room or rooms, then the tenant cannot say that he is the tenant of a 'house or part of a house, let as a separate dwelling'" (*Llewellyn* v. *Hinson* [1948] 2 K.B. 385, at p. 391).

Though the Landlord and Tenant (Rent Control) Act, 1949, drew a distinction between the case of sharing between a tenant and his landlord, and that of sharing between the tenant and some person other than his landlord, it is still of vital importance to discover whether a particular arrangement constitutes a "sharing."

In the leading case of *Neale* v. *Del Soto* there was a sharing of extensive accommodation, including the kitchen where the parties shared their meals and such work as was necessary to prepare them. It could not be said that any part of the house was let as a separate dwelling. If the rigour of *Neale* v. *Del Soto* had been applied without mitigation it would have excluded from the protection of the Acts all tenants who, being entitled to exclusive possession of one or more rooms, enjoyed under the terms of their tenancy agreement joint use of any other accommodation or facilities whatever, for example, a w.c. or a coal cellar.

However, by the decision in *Cole* v. *Harris* [1945] K.B. 474, where the landlord let to a tenant three rooms together with the use in common of a bathroom and a w.c., the three rooms did not cease to be "let as a separate dwelling," merely because the tenant shared the bathroom and w.c. Morton, L.J., said at p. 482: "It cannot be that the sharing of any room, however unimportant, takes the property outside the operation of the Act."

A search followed for a suitable test or phrase that would demonstrate what particular rooms it was fatal to share from the point of view of the tenant. In the following cases, including *Baker* v. *Turner* [1950] A.C. 401, it was suggested that the test was whether the shared accommodation was a "living room." In that category were placed kitchens as opposed to bathrooms and w.c.s which were regarded as ancillary facilities or accommodation. As an attempt to make the distinction even firmer the word "essential" crept in as descriptive of the living room. The word first appears in the headnote to *Cole* v. *Harris*, *supra*, which stated that "if there was a sharing of essential living rooms" there would not be a letting of a separate dwelling-house; the word formed no part of Morton, L.J.'s test in that case although it was attributed to him by MacKinnon, L.J., who also delivered a judgment. Since then the word "essential" has appeared in several judgments (*Winters* v. *Dance* [1949] L.J.R. 165, at p. 169; *Hayward* v. *Marshall* [1952] 2 Q.B. 89, at p. 97), and has found its way into the text-books—e.g., Lloyd and Montgomerie, 2nd ed., at p. 16, Megarry, 7th ed., at p. 69, and Woodfall, 25th ed., at p. 380.

In the latest decision on shared accommodation, *Paisner* v. *Goodrich* [1955] 2 W.L.R. 1071; *ante*, p. 353, it is emphasised that "essential" has no subjective meaning in the sense of being particularly necessary to the tenant but is only used in contradistinction to "unimportant" in regard to its function in the premises. The facts were that the late landlady owned a large house and wanted to find a tenant for some upstairs rooms. She let four rooms unfurnished to the tenant "together with the use in common with the landlord of the back bedroom on the first floor," and the use in common with the landlord and all others authorised by the landlord of the bathroom and lavatories. After the agreement was signed the landlord refused to let the tenant use the back bedroom at all, and the tenant never in fact used it until after the landlord's death four years later. The plaintiffs, who were the persons entitled to the reversion expectant on the termination of the tenancy, asked for possession of the rooms.

By a majority of the Court of Appeal (Romer and Parker, L.JJ., Denning, L.J., dissenting) the plaintiffs were held entitled to possession. Denning, L.J., declared that the sharing of a spare bedroom was not envisaged when the judges had laid down the test of the "living room." The learned lord justice drew attention to the fact that the practical valid decision of *Neale* v. *Del Soto* was not to force two housewives to share the same kitchen when amicable arrangements had given way to mutual dislike. The truth in the case before the court was that the room had never been shared at all; during the landlord's lifetime the landlord alone had used the room and after her death the tenant's son had used it.

Parker and Romer, L.JJ., took a different view on the point of concurrent as opposed to consecutive user. The point seems to have been mentioned first by Mackinnon, L.J., in *Cole* v. *Harris* in contrasting the sharing of use of a kitchen as opposed to the sharing of the use of a w.c. or a bathroom where, by their nature, the user would be successive. This view was not part of the *ratio decidendi*, as the learned lord justice adopted Morton, L.J.'s test. It is clear that minor rights and conveniences do not entail a sharing, for instance, access to the kitchen to make an early morning cup of tea. It may be argued that only where the alleged sharing entails

a substantial overlap of the landlord's and tenant's respective activities does the doctrine take effect, so that where there is a provision for exclusive use of a kitchen by either party at fixed times during the day then there would be no sharing. This promising refinement was rejected by the majority although Parker, L.J., expressly left open the position that might arise if there was a stipulation for the exclusive use by the tenant for, say, the first three months in every year.

The majority differed from Denning, L.J., in holding that it was too late to contend that the four rooms let to Mrs. Goodrich constituted a separate dwelling in themselves. As Lord Porter said in *Baker* v. *Turner* [1950] A.C. 401, at p. 414: "The main results of the decisions may, I think, be tabulated as follows: (1) A portion of a house which is let by a landlord to a tenant, even if in itself separate, ceases to be a separate dwelling or to be protected by the Acts if the terms of the letting contain a provision that the tenant shall have the right of using a living room belonging to the landlord." Thus it is immaterial that they are otherwise self-contained and the extra room gives little benefit to the tenant.

The decision therefore completes the category of rooms the sharing of which takes away the protection of the Rent Acts. On one side of the line fall kitchens, kitchenettes, sitting rooms and bedrooms and on the other, bathrooms, lavatories, garages, greenhouses, lumber rooms, coal houses and tool sheds.

It is emphasised that it is the use stipulated in the tenancy agreement rather than the actual use or amount of use that is the deciding factor and this, coupled with the fact that the landlord need not avail himself of the shared accommodation, points yet a further way in which a landlord can prevent his premises from falling within the Rent Acts.

J. H.

SAFE MEANS OF ACCESS TO FACTORIES

THE provision and maintenance of safe means of access to factories is a statutory duty. In this connection s. 25 (1) of the Factories Act, 1937, deals with specified things in that it states that "all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained." And s. 26 of that statute also deals with safe means of access. It provides that: "(1) There shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work; (2) where any person is to work at a place from which he will be liable to fall a distance more than ten feet, then, unless the place is one which affords secure foothold and, where necessary, secure handhold, means shall be provided, so far as is reasonably practicable, by fencing or otherwise for securing his safety."

There are certain points of difference between s. 25 (1), *supra*, and s. 26 (1), *supra*, which should be noted. Section 25 (1) deals with specified things, some of which are themselves means of access, such as stairs, passages and gangways, whereas s. 26 (1) deals with unspecified things which includes objects like scaffolding, staging and so forth which are erected for the purpose of getting to or at a place of work. Section 25 (1), in regard to its specific means of access, imposes a higher obligation than s. 26 (1). The former section enacts that the means of access shall be properly maintained, whereas s. 26 (1) only requires that the means provided under it shall be maintained so far as is reasonably practicable.

A discussion of both ss. 25 and 26 of the Factories Act, 1937, would lead us into a large field of investigation and therefore we propose here to confine our attention to s. 26 (1) of that statute, the actual provisions of which we have stated above.

The "means of access" must be to "every place at which any person has at any time to work." Therefore a means of access to a canteen does not come within subs. (1) of s. 26. In *Davies* v. *De Havilland Aircraft Co., Ltd.* [1950] 2 All E.R. 582, the plaintiff, who was employed by the defendants at their factory, was walking along a passage at the factory on his way to the canteen during a morning break, when, on turning a corner, he slipped on a patch of oil or of water in which some sand or oil might have been present and which had accumulated, possibly in a depression, on the concrete floor. He caught his foot between some machine tools standing nearby and was injured. It was held *inter alia* by Somervell, L.J. (sitting as a judge of the King's Bench Division), that s. 26 (1), *supra*, had no application to the facts because at the time of the accident the plaintiff was using the passage as a means of access to the canteen and not to go to any place at which any person had to work. In that case it was argued on behalf of the plaintiff that if the plaintiff had been returning from the canteen he would have been going from the canteen to his work, and it would be absurd if s. 26, *supra*, applied in that case and not if he were going towards the canteen. Somervell, L.J., said—although he had not got to decide it—that it would be outside s. 26 (1), *supra*, whether the plaintiff was going to the canteen or coming from it.

Similarly in *Rose* v. *Colville's, Ltd.* [1950] S.L.T. (N.) 72, a labourer who was engaged in cleaning the casting bay of a smelting shop in a steel foundry had occasion to go to the lavatory. In order to reach it he had to pass between a bogie full of hot slag and a wagon loaded with red-hot ingots. As he passed the slag bogie a loose piece of hot slag fell from it, pinned him to the ground and inflicted serious injuries on him. In an action for damages the Lord Ordinary (Blades) held that the route taken by the plaintiff when he was injured was a "means of access" to the lavatory and not a "means of access" to a "place" at which he had "at any time to work," and hence there had been no breach of s. 26 (1) of the Factories Act, 1937.

Section 26 (1) imposes a statutory duty upon the occupier of the factory not only to "provide" but also to "maintain" safe means of access. In *Callaghan* v. *Fred Kidd and Son (Engineers), Ltd.* [1944] 1 All E.R. 525, a girl working in a factory, instead of taking some bars to a grindstone for the purpose of grinding them, went away and left the bars lying on the floor in front of the machine. The grindstone was the left one of a pair of grindstones mounted about breast-high on a pedestal. Normally there was a clear space of about 18 feet in front of the pedestal, but at the time when the accident happened there were some eight to twelve bars 2 feet long by nearly an inch in diameter lying on the floor straight in front of the pedestal between the two grindstones. The appellant in using the grindstone passed from the right grindstone to the left and being intent on his work did not notice the bars on the floor, tripped over them and was injured by the revolving grindstone. It was held by the Court of Appeal (Scott and du Parcq, L.JJ., and Cohen, J.), that there had been a breach of the statutory duty by the employers and the appellant was entitled to recover damages for his injuries. Scott, L.J., in delivering the judgment of the Court of Appeal, said that the access to the grindstones was definitely unsafe at the time of the accident, and that the management had given no general orders to call the attention of their staff to the danger entailed by leaving anything on the flat surface of the floor near to the pedestal, although they

knew quite well that rods were not infrequently deposited there by the girls who brought them, and there left unguarded.

The foregoing decision was applied in *Hosking* v. *De Havilland Aircraft Co., Ltd., and Others* [1949] 1 All E.R. 540. The plaintiff was an inspecting engineer employed by the first defendants, who were occupiers of a factory. On a piece of ground 250 yards away from the factory, a duct some 3 feet wide and 4 feet deep in which it was proposed to lay pipes had been dug by the second defendants, who were contractors engaged by the occupiers to carry out building works on the site. On one side of the duct was a boiler used by the occupiers and on the other side were some coal hoppers in course of erection by the contractors, and beyond the hoppers were coal dumps. A plank owned by the contractors had been placed by them across the duct for the use of their own workmen and also to enable coal to be brought from the dumps to the boiler by the occupiers' workmen. In the course of his duty as inspecting engineer the plaintiff went to examine the progress of the work being done by the contractors. He started to cross the plank, but it broke and he was thrown into the duct and received injuries. It was held by Lewis, J., that the plank was the property of the contractors and had been placed across the duct for the use of their own workmen and also for that of the occupiers' workmen. He gave judgment for the plaintiff against both the occupiers and the contractors and directed that the occupiers should be indemnified by the contractors in the sum awarded as damages and in costs.

In *Lavender* v. *Diamints, Ltd.* [1948] 2 All E.R. 249, Denning, J., expressed the opinion that the duty owed by the occupier of a factory under s. 26 (1) to provide and maintain a " safe means of access to every place at which any person has at any time to work " is a duty owed not only to the workmen employed by the occupier of the factory but to workmen employed by an independent contractor and to the independent contractor himself, and it applies in respect both of the inside and the outside of the factory. In this particular case, the learned judge held that this duty applied in respect of the cleaning of windows. There was a duty on the occupiers, so far as reasonably practicable, to provide and maintain safe means of access to the windows of a factory which were the places where the window cleaner had to work.

Once a safe means of access is provided, the occupier is not responsible for every temporary obstruction, such as a patch of oil or slipperiness, which may, through some accident or mischance, occur in it. If the occupier has an efficient sytem to keep the means of access clean and free from obstruction, that is all that can be reasonably demanded of him. In *Levesley* v. *Thomas Firth & John Brown, Ltd.* [1953] 1 W.L.R. 1206; 97 Sol. J. 606, inside a shop in a factory occupied by the defendants, a space 15 ft. 3 ins. wide was marked out with white lines on either side as a way along which employees might pass to and from their work. When the plaintiff returned from the factory canteen to work in another shop he found that a lorry was occupying about half of the above-mentioned space. Passing the lorry the plaintiff fell over a piece of steel packing which was used on which to put machinery so as to enable it to be loaded on to a lorry. This piece of steel packing was about two inches in height and projected three or four inches into the marked way. The plaintiff was injured as a result of his fall. It was held by the Court of Appeal (Singleton, Denning and Morris, L.JJ.) that in view of the transient and exceptional character of the obstruction caused by the steel packing the defendants had not failed to maintain the safe means of access to work which they had provided, and therefore they were not liable for breach of their statutory duty.

In *Thomas* v. *Bristol Aeroplane Co., Ltd.* [1954] 1 W.L.R. 694; 98 Sol. J. 302, the plaintiff, who was employed by the defendants, slipped and fell on an icy surface at the foot of a ramp while entering the defendants' factory on his way to work at 7 a.m., being the time at which he was due to start work, and suffered injuries. On the day in question snow had fallen at 6.45 a.m., and the snow immediately froze. The defendants employed a number of maintenance men who started work at 7.30 a.m. and whose duty it was to spread sand on dangerous and slippery surfaces in the defendants' premises. In an action for personal injuries, it was held by the Court of Appeal (Somervell, Morris and Romer, L.JJ.) that the danger of slippery or icy surfaces is an incident of winter in this country which everyone encounters and it is something one must anticipate and deal with oneself. The mere fact that a person is required to walk on an icy surface which at the time is uncovered or unsanded does not indicate in itself the lack of a safe system, or that there has been a failure so far as is reasonably practicable to maintain a safe means of access. In the present case the defendants were not in breach of their statutory duty under s. 26 (1) of the Factories Act, 1937, and furthermore, as the defendants had taken all reasonable care, they were not liable for negligence at common law.

In the above connection it is very relevant to mention the case of *Latimer* v. *A.E.C., Ltd.* [1953] A.C. 643; 97 Sol. J. 486, where the House of Lords explained the meaning of the word " maintained " in s. 25 (1) of the Factories Act, 1937. As the same word appears in s. 26 (1) of that statute, that decision is also highly important under s. 26 (1). In *Latimer's* case, where an accident arose through a workman slipping on an oily liquid which had collected on the floor of a factory, the House of Lords (Lords Porter, Oaksey, Reid, Tucker and Asquith of Bishopstone) held that " properly maintained " in s. 25 (1) of the Factories Act, 1937, read with the definition of " maintained " in s. 152 (1) of that statute, refers to the general condition and soundness of construction of the floor and not to some transient and exceptional condition of it: a floor which was in itself of sound construction and in proper condition did not cease to be in an efficient state because there was temporarily something on it which gave rise to danger. In that particular case, owing to an exceptionally heavy storm of rain, a factory was flooded with surface water which became mixed with an oily liquid used as a cooling agent for the machines. The floor itself was level and structurally perfect. The respondents spread sawdust on the floor, but there was insufficient sawdust to place it on portions of the floor, including the part of the floor on which certain barrels were situated. The appellant, in the course of his work, went to collect a barrel when he slipped on the oily surface of the floor and was injured. It was held by the House of Lords that the respondents, the occupiers of the factory, were not in breach of their statutory duty and were not guilty of negligence at common law. On the same basis it was held by Somervell, L.J. (sitting as an additional judge of the King's Bench Division), in *Davies* v. *De Havilland Aircraft Co., Ltd.* [1950] 2 All E.R. 582, that the existence of an unexplained patch of oil or of a patch of water on a passage did not amount to a failure properly to maintain the floor and the passage as required by s. 25 (1) of the Factories Act, 1937.

The common-law duty of an employer to provide proper materials and a safe system of working is different from the statutory duty under s. 26, *supra*, to provide and maintain a safe means of access. This point was emphasised in *Lovell* v. *Blundells & T. Albert Crompton & Co., Ltd.* [1944] 2 All E.R. 53, where the plaintiff, who was a boilermaker in the employ of the defendants, in the course of overhauling the boiler tubes

of a ship in wet dock, erected a temporary staging about 4 feet from the ground, using a plank and wedge which he found in the engine room and stokehold respectively. The staging collapsed and he was injured. Apart from the fact that Tucker, J., held that s. 26, *supra*, did not apply to a ship in a wet dock at all, the learned judge held that the defendants were in breach of their common-law duty to provide a proper plank and appliances at the place of work and this was quite a different matter from the statutory duty to provide a safe means of access to get to the place of work.

In conclusion it should be noted that s. 26 (1) of the Factories Act, 1937—and indeed the whole of that statute—applies to the occupier of a factory in respect of an accident occurring in the course of building operations which are conducted in the factory, even though the building operations are carried out by an independent contractor—see *Whitby* v. *Burt, Boulton & Hayward, Ltd.* [1947] 2 All E.R. 324, followed in *Whincup* v. *Joseph Woodhead & Sons (Engineers), Ltd. and Another* [1951] 1 All E.R. 387. In the latter case, the plaintiff was employed by the first defendants, a firm of independent contractors, to repair some glass in the roof of a factory occupied by the second defendants. The plaintiff was walking along the gutter when he stumbled and fell through the asbestos sheeting to the floor some 30 feet below and was injured. McNair, J., found that the gutter without duckboards was dangerous and did not provide a safe means of access to the work, and that the plaintiff's accident arose from the absence of a safe means of access. The second defendants were therefore liable to the plaintiff, and the learned judge ordered that there should be contribution between the two defendants themselves limited to 50 per cent. of the liability of each.

M.

RECENT ROAD TRAFFIC CASES

THE Road Traffic Bill, which was introduced last December, has been re-introduced into the new Parliament with certain amendments. It is unnecessary to discuss the new Bill at this stage, but the opportunity will be taken in this article to mention some decisions of the High Court affecting road traffic over the last few months. Before turning to the decisions, one may note that there is now a new edition of the Motor Vehicles (Construction and Use) Regulations, 1955 (S.I. 1955 No. 482), which consolidates, with amendments, the 1951 and subsequent regulations; the changes are set out in the explanatory note at the end of the Stationery Office copy of the regulations. Also, during the railway strike, the Emergency Regulations, now revoked, relaxed the law relating to the use of motor vehicles, their licences and insurance. These regulations will only be in point in respect of acts done during the currency of the strike. There is also a new edition of the Motor Vehicles (Track Laying Vehicles) Regulations (S.I. 1955 No. 990), consolidating, with a few amendments, the 1941 and subsequent regulations.

The decisions will now be considered under their various headings.

Insurance

Many insurance policies allow use by the insured party of his motor car for social, domestic and pleasure purposes. In *Lee* v. *Poole* (1954), Crim. L.R. 942, a motor vehicle was used to move a friend's furniture; this was done as an act of friendship and no payment was made for the use. It was held that this use came within the expression cited above and the use of the van was covered under the Road Traffic Act, 1930, s. 35, at the material time.

Policies also frequently contain permission for use of the vehicle by a person on the insurer's order or with his permission for the purpose of his business, and in *Ballance* v. *Brown* (1955), Crim. L.R. 384, a policy covered such persons if "in the insurer's employ." The vehicle owner instructed a business colleague to take the vehicle home and bring it back next day, so that they could both go on a business journey. Instead of going straight home, the driver, without either express permission or prohibition from the owner, took a girl to her home, the deviation involving two and a half miles extra journey. The driver was charged with using the car without insurance, contrary to s. 35 of the Road Traffic Act, 1930, during the deviation, but it was held that in making it it could not be said that he was on a frolic of his own; it was also held that he was in the employ of the policy-holder and therefore no offence had been committed.

Careless Driving

In *Randall* v. *Tarrant* [1955] 1 W.L.R. 255 (*ante*, p. 184), a vehicle was approaching another vehicle parked in a narrow lane. The driver of the approaching vehicle misjudged the clearance and there was a collision. It was held that it was the driver's duty to judge the clearance properly and to slow down and, if necessary, stop to see if there was enough room to pass. It is submitted that this is not a really important case in law as all careless driving cases involve questions of fact rather than law.

In *Henderson* v. *Jones* (1955), 119 J.P. 304, the defendant collided with another vehicle and when asked for an explanation he said: "I have no excuse, I must have fallen asleep." It was held that a person who is driving whilst asleep is at least guilty of driving without due care and attention and that a decision (*Edwards* v. *Clarke* (1951), 115 J.P. News. 426), which appears to be to the contrary, was a special decision on its own facts and was no authority to the contrary. It had already been held in *Kay* v. *Butterworth* (1946), 110 J.P. 75, that a driver who allows himself to be overcome by sleep may be guilty of careless driving.

In *Marson* v. *Thompson, The Times*, 7th March, 1955, the Divisional Court exercised their power of reviewing a perverse finding by magistrates and allowed an appeal by the prosecutor against the dismissal of a charge of dangerous driving. The defendant, a bus driver, had driven at 15 to 20 m.p.h. past a stationary bus, although signalled not to overtake, and gone within three feet of his offside kerb. This caused some approaching cyclists to pull right into their nearside and one fell in front of the bus and was killed.

Disqualification from Driving

In *Petherick* v. *Buckland* [1955] 1 W.L.R. 48 (*ante*, p. 78), a defendant had been disqualified from driving "5-cwt. vehicles" for twelve months. In *Burrows* v. *Hall* [1950] 2 K.B. 476; 94 SOL. J. 385, it had been held that justices were entitled to limit a disqualification to a vehicle of the class or description in use by the defendant when he committed the offence. The High Court in *Petherick's* case did not interfere with the disqualification but held that magistrates should, in future, limit disqualification to classes of vehicles dealt with as a particular class or under a particular description in the Road Traffic Acts and regulations made thereunder. This would mean that a disqualification from driving 5-cwt. vehicles should not now be imposed but the disqualification should be from driving motor cars or heavy motor cars or

motor cycles or some of the other types of vehicle specifically mentioned in the Road Traffic Acts or in regulations made thereunder, such as the Motor Vehicles (Construction and Use) Regulations, 1955. This would seemingly include public service vehicles and the various types of vehicles mentioned in Sched. I to the Road Traffic Act, 1930, e.g., goods vehicles which are motor cars or heavy motor cars. In this paragraph the term "motor car" is used as meaning a motor vehicle, whether a car or van, the unladen weight of which does not exceed three tons. The description "private motor car" does not appear in the Road Traffic Acts, but in *Burrows* v. *Hall, supra*, a disqualification limited to driving private motor cars was upheld.

A person convicted of driving whilst disqualified contrary to the Road Traffic Act, 1930, s. 7 (4), or applying for a licence whilst so disqualified, must be sent to prison unless there are "special circumstances." The Criminal Justice Act, 1948, s. 17 (2), however, requires a court not to imprison a person under twenty-one unless no other method of dealing with him is appropriate. The question whether s. 17 overrode the peremptory requirement to imprison imposed by s. 7 (4) of the Road Traffic Act was settled in *Davidson-Houston* v. *Lanning* [1955] 1 W.L.R. 858. It was there said that, if in any case justices thought that they could ignore s. 17 (2) of the 1948 Act, they would be wrong but, on the defendant's record in *Davidson-Houston's* case, they were justified in sending him to prison, for no other course was open to them in view of his continual defiance of the law. It seems, therefore, that, although the language was not very precise, a person under twenty-one years of age convicted under s. 7(4) of the 1930 Act should not be sent to prison unless no other method of dealing with him is appropriate.

In *R.* v. *Graham* (1955), Crim. L.R. 319, a defendant was sentenced to a term of imprisonment and disqualified from driving, the disqualification to commence on his release from prison. After his release from prison, he drove again during the period of disqualification. It was held that he could not be convicted of driving whilst disqualified as the original disqualification should have run from the date of his conviction and a disqualification to start on a future date, i.e., on release from prison, was bad. In *R.* v. *Phillips, The Times*, 21st June, 1955, the Court of Criminal Appeal directed that, where disqualification is imposed at the same time as imprisonment, the term of disqualification ordered should be a sufficiently long one to ensure that the greater part of it has not expired by the time the defendant comes out of prison.

Special Reasons

"Special reasons" were again before the court in *Dennis* v. *Tame* [1954] 1 W.L.R. 1338; 98 SOL. J. 750. In that case the defendant, who was a serving airman, used a car whilst uninsured. He was punished by his commanding officer for this offence, but this fact should not have allowed the magistrates to refrain from disqualifying him from driving. Nor could magistrates avoid the necessity of disqualifying by giving a conditional discharge unless there were special reasons that justified them in doing so.

Road

The meaning of the term "road" under the Road Traffic Acts and the Road Transport Lighting Act, 1927, was discussed at 98 SOL. J. 641; a recent case is *Buchanan* v. *Motor Insurers' Bureau* [1955] 1 W.L.R. 488 (*ante*, p. 319). The question there was whether a road within the Port of London was a road within the meaning of the Road Traffic Act, 1930, s. 121, where it is defined as any highway and any other road to which the public has access. Evidence was given that an unauthorised person may not enter the Port of London and that only persons having business there are normally admitted. It was held that the place where the accident occurred was not a road to which the general public had access either as a matter of legal right or by tolerance of the Port of London Authority. Rather surprisingly, McNair, J., did not base his decision on *O'Brien* v. *Trafalgar Insurance Company* (1945), 61 T.L.R. 225, where a road within a factory area, to which only persons with passes and having business at the factory were admitted, was held not to be a road under the Road Traffic Acts, although this case was cited to him. It seems that, as a result of a special Act passed since the incident in the case of *Buchanan*, roads within the Port of London are now generally subject to the Road Traffic Acts.

Driving

In *R.* v. *Kitson, The Times*, 27th May, 1955, the facts were that a defendant, who was charged with driving a motor vehicle under the influence of drink, had been sitting in the passenger seat asleep while the vehicle was stationary, and awoke to find the driver gone and the vehicle moving away down a hill. He transferred himself to the driving seat and steered the vehicle for 200 yards and eventually ran it on to the grass verge; he claimed that he did not stop it earlier for fear of a skid on the greasy road. It was held that he was "driving" the vehicle. This decision seems to be in accordance with previous decisions, e.g., *Saycell* v. *Bool* [1948] 2 All E.R. 83; 92 SOL. J. 311, where a person who got into the driving seat of a car, released the brake and allowed it to run downhill, was held to be the driver although the engine was not started and there was no petrol in the tank, and *Collyer* v. *Dring* (1953), unreported, where a young driver, through inexperience, reversed on to the road from private land unintentionally and was held to be "driving" and "using" on the road during the short time that she was there.

Reporting Accidents

In *Quelch* v. *Phipps* [1955] 2 W.L.R. 1067 (*ante*, p. 355), the driver of a bus was held guilty of not reporting an accident contrary to the Road Traffic Act, 1930, s. 22. A passenger had jumped off his moving bus at the traffic lights and injured himself. It was contended for the driver that the accident had not occurred "owing to the presence of a motor vehicle on the road," but the High Court held that there was sufficient to bring the accident within s. 22. It was said that the test of whether an accident occurs "owing to the presence of a motor vehicle on a road" is that there must be some direct, not indirect, causal connection between the accident and the vehicle's presence on the road. An example cited of an accident not within s. 22 was where a pedestrian stepped back to avoid a motor vehicle and injured another pedestrian in doing so. It may well be that if a motor vehicle is in any way touched as a result of the accident, e.g., a cyclist swerves too late and collides with a stationary car, the driver of the car must report the accident, but he might not have to do so if the cyclist had swerved too late and had fallen off his cycle without there being any contact with the car. Even the latter view, however, might have to be qualified where the car had been left in a very dangerous position so that an accident was practically invited. The driver need not anyhow comply with s. 22 if he is reasonably unaware that there has been an accident (*Harding* v. *Price* [1948] 1 K.B. 695; 92 SOL. J. 112). Quarter sessions have held that, even if the driver is aware that there has been an accident, he need not comply with s. 22 if on reasonable grounds he believes that there has been no injury to a person or animal or damage to another vehicle (*Butler* v. *Whittaker* (1955), Crim. L.R. 317),

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e.g., an apparently unhurt pedestrian assuring a motorist that he is in fact unhurt.

Obstruction

Readers will already have noted the case of *Sprake* v. *Tester*, a decision of the Divisional Court, on p. 360, *ante*. It was there held that a person who went to a shop to get a small parcel was not loading goods on to his car so as to come within the exception for loading and unloading goods in a "no-waiting" street order.

General Criminal Liability

In *John* v. *Humphreys* [1955] 1 W.L.R. 325 (*ante*, p. 222), it was held that the onus of proving that he has a licence always rests on the defendant. In that case he had been seen driving a motor vehicle and the magistrates had thought that there must be some additional evidence to show that he had not got a driving licence, e.g., a statement to that effect or something else to show that the police had reasonable grounds for prosecuting him. The High Court, however, said that the police could prosecute anyone whom they saw driving and that the onus was then on the defendant in court to prove that he had the licences or, *semble*, insurance required by law, although Lord Goddard, C.J., added that it would be improper for the police to prosecute without some grounds for believing that an offence had been committed.

G. S. W.

A Conveyancer's Diary

REPORT OF THE ROYAL COMMISSION ON TAXATION OF INCOME—I

THE final report of the Royal Commission on the Taxation of Profits and Income,* which had Lord Radcliffe as its chairman for the last three of the four years of its deliberations, was published two months ago (p. 407, *ante*). The report runs to over 350 pages, not counting the memorandum of dissent put forward by a minority of the Commission's members or various appendices, and it would seem probable that many readers of this Journal have not had the time or the opportunity even to look through the contents of the Blue Book in which the report was presented to Parliament. For these readers, I propose in this and the next two or three articles to present in summary form the conclusions of the Commission, and the considerations which led to these conclusions, on various subjects of particular interest to the property lawyer, of the kind which in different connections from time to time provide the material for articles in this Diary. These subjects, of course, form only a small proportion of those dealt with in the report. There are chapters on capital gains and on business and personal expenses, on fluctuating incomes and on betting and gambling winnings, and a great deal of matter on the various taxes borne by corporations. Most of this affects us all in one way or another as individuals, and some at least of the subjects which I have just mentioned are of much greater general interest than those which I have selected. But a choice had to be made, and the nature of it was necessarily dictated by consideration of what is most relevant to the topics of the law which the reader expects to find treated here.

One such is the law of charitable trusts. The existing system of taxation, the report states, provides for charities what is in effect a general exemption from income tax. Their income derived from rents of land is exempt; so is their income from investments; and they are not, generally, taxed under Schedule A in respect of lands owned and occupied by them. Tax is repaid to them upon the gross amount of annual subscriptions paid under deduction of tax and arising under seven-year covenants. In the special case of a charity carrying on a trade, the resulting profits enjoy a qualified exemption from tax. The greater number of charitable trusts in this country (a figure of 110,000 was mentioned in the Nathan Committee's Report as known to the Charity Commissioners and the Ministry of Education) makes the cost of this exemption considerable: it is estimated by the Board of Inland Revenue at £35 million annually.

Some relief has been allowed to charities, the report continues, ever since there has been an income tax in this country. But, accepting the view that all parts of the national income are *prima facie* subject to a tax on income, the present system does amount in effect to a grant of public moneys towards the furtherance of such causes as come within the legal category of charity without Parliamentary control of their individual purposes or of their administration, and it is on this ground that the system has been criticised in the past. The Commission think that there is force in this criticism, and that to appreciate how much force there is in it some attention must be paid to the question what constitutes a charity for the purposes of income tax exemption. As revenue law has at present no independent definition of charity, anything being a charity for its purposes if it would be treated as such by the general English law of charitable trusts, this necessitates a brief review in the report of the history of the law of charitable trusts from the Statute of Charitable Uses, 1601, to Lord Macnaghten's summary of the purposes that are within the purview of the Elizabethan statute in *Pemsel's* case ([1891] A.C. 531): "trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads." This fourth head has been held to include, for example, the purchase of regimental plate, the promotion of the practice and performance of choral work, the general promotion of agriculture, the reduction of the National Debt, and the promotion of temperance by the provision of a temperance public house. These, in the Commission's view, are doubtless extreme cases, but even so, the Commission's conclusion is that its predecessors, the 1920 Royal Commission on Income Tax, were not exaggerating when they said, in recommending that for the purposes of income tax charities should be specifically redefined by Parliament, that "the term 'charitable purposes' covers activities which the ordinary man would not regard as charitable at all."

In the Commission's view, what is amiss in the present system is not the idea of giving income tax relief in respect of charity, but the undue width of the range of what ranks as a charity for this purpose. It is the vagueness of definition or, more primarily, the absence of definition which provokes criticism, for it enables the very substantial benefits of exemption to be claimed by activities which, in extreme cases, have no real connection with the idea of charity at all.

* Cmd. 9474, H.M.S.O., 12s. 6d. net.

It is here that some action is, in their view, called for, for the purpose of introducing into the tax code a more limited and more precise definition of charity. The difficulties in achieving a satisfactory result are frankly faced. Charity is not a word with a precise construction in ordinary language any more than in legal speech, and the report expresses doubts whether in ordinary language the word has any particular connection (which is, of course, vital so far as the legal concept is concerned) with the idea of public benefit. Yet, allowing for its vagueness, the ordinary idea of charity centres on the relief of poverty and distress. But in any country in which there is a long history of charitable activity, the word takes to itself associations which in time extend its intrinsic meaning: thus, in this country, education and the learning and research upon which education is founded have become linked with the idea of charity, and so has much which is concerned with the learning of a craft. In both cases, piety suggested that those without the means to acquire their own teaching should be relieved by the alms of the donor. Finally, the historic rôle of religious bodies as almoners of charity has led to what is at any rate a widespread feeling that religious purposes are themselves charitable objects.

This historical analysis of the English conception of charity leads the Commission to conclude that there would be no insuperable difficulty in producing a statutory definition of charity for tax purposes that would at any rate correspond more closely than the present with accepted ideas of what charity is. It would be on these lines: "the relief of poverty, the prevention or relief of distress, the advancement of education, learning and research, the advancement of religion." This would be an enlargement of the three classes specifically included in the present working rule, but it would omit the fourth indeterminate class. The result would be that exemption would be denied to a number of praiseworthy activities which at present enjoy it. The conclusion of the Commission on this part of their investigation is that a new and more restrictive definition is not impossible and that it is the only satisfactory line upon which reform can proceed; and they recommend, therefore, that the law should be amended to give effect to it, for the present situation, in their opinion, is hardly less than chaotic and the prevailing uncertainty does not do credit to the tax system.

If one may interpose a personal view here, the present law generally is no credit to the legal system. A few years ago it was held, in two cases reported within a short time of each other, that the purposes of a convent of cloistered nuns were not legally charitable, but that the purposes of a home for the reception of kittens needing care and attention were legally charitable. Each of these decisions may, I suppose, be supported or attacked on grounds of public policy according to the standpoint from which it is viewed, but the contrast between them does not inspire respect for this branch of the law. The Government has lately announced its intention of promoting legislation to implement some of the recommendations of the Nathan Committee, one part of which at least will have the effect of actually broadening the present concept of a legally charitable purpose. It is much to be hoped that before the Bill is drafted the department charged with that duty will consult with the Treasury as to the intentions of the Government on this part of the Radcliffe Report. To have two doses of legislation in a short space of time subjecting a particular rule of law to different treatment for different purposes will only add (if that is possible) to the chaos which, I think, most readers will agree with the Commission, is an apt description of the present state of the law of charitable trusts.

"A B C"

Landlord and Tenant Notebook

CONTROL: EXEMPTION OF HOUSING TRUSTS

OUR report of *Guinness Trust* (*London Fund*) *Founded* 1890, *Registered* 1902 v. *Green*; *Same* v. *Cope* [1955] 1 W.L.R. 872 (C.A.); *ante*, p. 509, follows closely and aptly certain observations made by colleague Richard Roe, in "Here and There," on the functions of law reporters as social historians. For the issue turned on the altered significance of the expression "working class"; indeed, if reports had sub-titles, "Then and Now" might have met the case.

The Housing Repairs and Rents Act, 1954, s. 33 (1), decontrolled "a tenancy where . . . the interest of the landlord . . . belongs to any housing trust which is subject to the jurisdiction of the Charity Commissioners," and by s. 33 (9), "the expression 'housing trust' means a housing trust as defined by the Housing Act, 1936, or a corporation or body of persons which, being required by the terms of its constituent instrument to devote the whole or substantially the whole of its funds to charitable purposes, would be a housing trust as so defined, if the purposes to which it is so required to devote its funds were restricted to those to which it in fact devotes the whole or substantially the whole thereof."

To qualify for this new freedom, then, a landlord must in the first place be subject to the jurisdiction of the Charity Commissioners and must then either satisfy the requirements of a statutory definition or behave as if he did. The statutory definition of "housing trust," to be found in s. 188 (1) of the 1936 Act, is: "a corporation or body of persons which by the terms of its constituent instrument is required to devote the whole of its funds, including any surplus which may arise from its operations, to the provision of houses for persons the majority of whom are in fact members of *the working classes*, and to other purposes incidental thereto." This definition was not modified by the Housing Act, 1949, which eliminated most of the references to the working classes contained in that of 1936, including the reference in the definition of "housing association" (and housing associations have also had their tenancies exempted by the Housing Repairs and Rents Act, 1954).

The plaintiffs in the *Guinness Trust* case, respondents on appeal, had obtained orders for possession against the defendants who had pleaded the protection of the Rent Restrictions Acts. The constituent instrument of the plaintiffs was a trust deed made in 1890, which recited the grantor's concern over the gravity of the evils resulting from insanitary and insufficient accommodation being supplied to large numbers of the poorer of the working classes, and referred to a communication of 18th November, 1889, in which he had requested the trustees to undertake the administration of a fund which he proposed to establish with the object of endeavouring in those and other respects to ameliorate the condition of the labouring poor of London, and of their modes and manner of living, by the provision of improved dwellings; and by giving them facilities, should the trustees think it desirable in any or all cases to do so, for obtaining means of subsistence and the necessaries of life; and by such other means as the trustees might in their uncontrolled discretion think fit,

There was no dispute as to whether the trust was under the Charity Commisioners' jurisdiction. It was held that it was required to devote substantially the whole of its funds to the provision of houses for poor people (including dockers, railway workers, cleaners, etc.), and that it in fact did so (though it also provided a residential home for old people and a holiday home for tenants); decisions on this point may have been called for by reason of the "other respects" and "other means" in the deed. But the real issue was whether the trust in fact provided houses *for members of the working classes*, which raised the question what that expression meant.

The expression occurred in many of the provisions of the Housing Act, 1936, as it did in the earlier Acts dealing with housing; indeed, the first of these was the Housing of the Working Classes Act, 1890. But the only definition was one applicable to compulsory acquisition of property under ministerially approved schemes which had to make provision for accommodating as many members of the working classes as were displaced; and for this purpose the Housing Act, 1936, Sched. XI (11) (*e*), said (till repealed by the 1949 Act): "The expression 'working class' *includes* mechanics, artisans, labourers and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family; and persons other than domestic servants whose income in any case does not exceed an average of £3 a week, and the families of any such persons who may be residing with them."

It may be that it was because of the repeal, or it may be because the definition is not exhaustive, or because it was of limited application; but the above does not appear to have been referred to in the *Guinness Trust* case. Nor were *White* v. *St. Marylebone B.C.* [1915] 3 K.B. 249 (in which Lord Reading, C.J., favoured the "ordinary and popular sense" interpretation, holding that a chauffeur, "the driver of a motor-car whose employment is that of driving a motor-car," was a member of the working classes for the prohibition of back-to-back houses provisions in the Housing, etc., Act, 1909) or *Arlidge* v. *Tottenham U.D.C.* [1922] 2 K.B. 719, likewise applying ordinary and natural construction, mentioned. But the Court of Appeal, while considering the phrase "working classes" quite inappropriate to modern conditions, decided that the only way in which the test could be applied was to ask whether the house was provided for people in the lower income group, or, in other words, for people whose circumstances are such that they are deserving of support from a charitable institution in their housing needs. That is how Denning, L.J., put it. Birkett, L.J., who agreed and referred to the social revolution which has taken place in our lifetime, spoke of "people of comparatively small incomes," but I am not quite sure whether a reference to an unskilled man earning over £20 a week was meant to illustrate by an example or not. Romer, L.J., considered that working classes meant what was now generally known as the lower income group who earn their living regardless of the social level, whatever it may be, to which they belong.

What the court did, then, was to seek and apply a new significance for the expression; and this, perhaps, suggests some ground for deferential criticism. For both Denning, L.J., and Birkett, L.J., referred to a passage in the former's judgment (as Denning, J.) in *H. E. Green & Sons* v. *Minister of Health* [1948] K.B. 34, in which he pointed out that fifty years ago the phrase "working classes" was well understood to mean people who worked with their hands, whether on the land or in railways or in mines; they earned less than other people; but nowadays bank clerks or civil servants might earn less than manual workers, etc. The actual decision, however, was that a local authority might, under the 1909 Act and its Eleventh Schedule (referred to earlier) acquire land for building houses of a *type* suitable for occupation by members of the working classes, though it did not intend that all the houses it would build would be occupied by such. But it is of interest that, in the course of his *dicta*, Denning, J., arrived at the conclusion: "There is no such separate class as the working classes." If this be so, how can a court give a new significance to the expression? How can it say that a house is provided for a class which cannot be distinguished? Readers of "Forensic Fables" may recall what happened in the case of the bequest for the benefit of cab-horses, a flourishing species when the will was made, extinct when the testator died; attempts to apply *cy-près* principles failed. The fable may lack authority, but yet make one wonder whether the course adopted, which was substantially a *cy-près* one, was altogether sound. It would also be interesting if one could hear the views of this court on the modern interpretation of the Profane Oaths Act, 1745 (like the Rent Acts, an emergency measure), with its threefold classification: day labourer or common soldier, sailor or seaman; other person under the degree of a gentleman; person above that degree.

R. B.

HERE AND THERE

PRISON NEWS

"With stubborn resolution to be free
The human herd runs headlong to the sea."

And just at this season the journalists choose to sprinkle the papers liberally with prison news. They know best, of course, what the public likes to read and when. They know that for their customers nothing makes such comfortable reading as the misfortunes of others, provided you do not feel obliged actually to do anything about them. It is a modern transcription of the notion that part of the joy of the blessed in Heaven would be the contemplation of the merited sufferings of the damned, except that the newspaper reader is not so "choosy" about the sufferings he contemplates being merited. Still, as we all know that British justice is the best in the world, no one can have any serious doubts (can he?) that the sufferings of our prison population (when retrograde survivals in our penal system allow them to suffer) are in strictness merited. With this conviction well in mind, one can peruse that illuminating document, the report of the Prison Commissioners for 1954. In that year the number of prisoners dropped by 1,800 to 21,200, the lowest for four years. Nevertheless, in local prisons, 3,200 are still sleeping three to a cell. Nottingham has been called in to catch the overspill of prisoners from Parkhurst sentenced to preventive detention. These men responded to opportunities for study, but many found an eight-hour working day too much for them. One complained that he hadn't worked an eight-hour day for thirty-five years. For preventive detention men there is the experiment of the Bristol hostel where inmates are allowed out unsupervised and many even do a little basic shopping. Despite a couple of spectacular escapes from Manchester Gaol, breaking out was far rarer than in the previous year. Gun-guards no longer accompany the working parties at Dartmoor and it took the prisoners a week to notice their absence. Anyhow, no guard has used his gun since 1951,

and the legal perils involved in shooting were an even more effective deterrent to the warder than the danger of being shot can have been to the prisoner. The Governor believes that the change has brought "an increase in respect and trust." From other sources we know the modern prisoner's capacity for innocent enjoyment. Pentonville studies musical scores and reads and reads, and once a book is recommended everyone wants it "because the prison is a closed community without outside interest." Holloway reads fewer books than Pentonville but (with the raging utilitarianism of the feminine mind) books of a more practical turn. In Chelmsford Gaol the prisoners who are not making toys or doing quilting or embroidery are mainly knitting everything up to Fair Isle pullovers for the benefit of their families.

THE JUNIOR SCHOOL

THE most fascinating part of the Prison Commissioners' report deals with the young prisoner under twenty-one, as revealed by the specimens examined at Wormwood Scrubs. The latest of those "quizzing" analyses, in which the more correct English like to believe that they see themselves as they really are, registers the finding that about a quarter of the population do not regard themselves as belonging to any religious denomination; three-fifths believe neither in Heaven nor in Hell, and half go to church only for weddings and funerals. Yet force of national habit or atavism or what you will makes three-quarters of the young prisoners declare themselves "C. of E.," though hardly a tenth of them can tell what it means or even know what is implied in professing Christianity. The Governor's portrait depicts them as lacking in stamina, whether moral, spiritual or intellectual. Their general level of intelligence and knowledge is deplorably low. Only half can spell correctly, and even fewer can write grammatically. (Their girl friends can do a lot better.) Real poverty is not the trouble any more, but lack of parental control and, even more, of parental good example. They are left without any principles of right and wrong and with the conviction that all that matters is not to be found out, so that, for instance, when they are "on the run" from the Army they think they have every excuse to burgle and steal. The Warden of the detention centre at Goudhurst reported that its sharp discipline was the ideal answer to the exhibitionism of the "Teddy Boys." "The more exaggerated the dress the greater the degree of illiteracy; rarely do we see an intelligent Teddy." And the men who look after this human miscellany, the prison warders? Recruiting fell in 1954, but recovered after October with the grant of an increase of 15s. a week in their pay, till there were 2,000 more than in 1947. Now, I see, they are claiming a further increase and aim at a remuneration maintained in relation to that of the police.

WILDER TO THE WEST

WHAT generally strikes foreigners about English justice is that, for all its archaic trappings, its quality is curiously paternal. In the same way, the report of the Prison Commissioners has much the same quality as a headmaster's report to the Board of Governors. That impression of paternalism is reinforced by the last message recently left behind by a miner hanged at Leeds: "I should just like to add my grateful thanks to all prison personnel with whom I came in contact while I was here from the Governor down to the prison officers. I can honestly say that I have received every consideration and assistance I could have possibly hoped for." Now, taking the essentially placid atmophere (all things considered) of our own prisons, look at some quite recent prison news from over the Atlantic. Walla Walla Prison, Washington: Twelve convicts with home-made knives captured fourteen wardens. State Penitentiary at Lincoln, Nebraska: A five-hour blaze when 200 prisoners with home-made knives revolted and set fire to part of the prison. Great Meadow Correctional Institution at Cornstork, New York: Fourteen rioting convicts, three troopers and a warder injured. Women's Reformatory at Birmingham, Massachusetts: More rioting. The Superintendent at Great Meadow said: "They heard about a Nebraska prison riot on the radio. These things are contagious." That's one side of prison life in the States. On the other hand, there was the escaped convict who recently returned to gaol at Trenton, New Jersey, telling the gate-keeper, "I've come back to stay. My conscience bothered me." There's a faintly English touch about that. There is also a pleasantly British absence of fuss about the reaction to the escape of three prisoners from the new provincial gaol at Prince George, British Columbia, built at a cost of £180,000. A week after it was opened they walked out of the unlocked main door, and the warden remarked: "It's a new gaol, and there are lots of kinks yet to be ironed out."

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

National Insurance and the Self-Employed

Sir,—With reference to the letter of the Chief Press Officer, Ministry of Pensions and National Insurance, in your issue of 18th June.

The position of solicitors as self-employed persons is weighted against them by the following contributions which are happily collected from them as employers, namely, industrial injuries contributions which they have to pay as employers, in respect of their married women employees.

I have two married women clerks. They prefer to rely on their husbands' contributions to the fund. Nevertheless the Ministry collects 5s. 2d. each per week per employee. I as employer have to pay the majority of this, they pay only a few pence.

And what industrial injury is a female solicitors' clerk likely to suffer?

J. R. BARTON.

Winsford, Cheshire.

Criminal Trials in Fiji

Sir,—I am a member of the Bar of Fiji of forty-five years' standing, though I have practised most of the time in New Zealand, where I am also a member of the legal profession. The last three years, however, I have been counsel for the defence in three murder trials in Fiji, and I want to make a strong plea for the institution of a proper jury system in criminal trials in Fiji, or at least where the death sentence or life imprisonment is involved. At present, where the accused, or the person against whom the alleged crime has been committed, is a native, or of native descent, or of Asiatic origin or descent, the trial is to be with the aid of assessors (not less than two, but not less than four in capital cases), in lieu of a jury, "unless the presiding judge for special reasons, to be recorded in the minutes of the court, thinks fit otherwise to order, and upon every such trial the decision of the presiding judge with the aid of such assessors on all matters arising thereupon which in the case of a trial by jury would be left to the decision of the jurors shall have the same force and effect as the finding or verdict of a jury thereon":

Criminal Procedure Code 1945, s. 248. I do not think there is any instance where the presiding judge has, for "special reasons," granted a jury, where the person accused, or his victim, is a native, etc., although there have been a number of applications in murder trials. The judges have held, in each instance, that there is nothing unusual in the facts to come before the court to warrant a jury. It will be noted, however, that where the accused, and his victim, are Europeans, there is a jury as of right! Where the trial is with the aid of assessors, the latter merely tender their opinion, and the judge is not bound thereby —the judgment is to be his: *ibid.*, s. 308. The judges, from time to time, have on occasion not agreed with the opinions of the assessors. In a recent case, the Chief Justice acted on the minority opinion of two, in favour of guilty, and against the majority opinion of three, of not guilty (there were five assessors), and convicted the accused, a Fijian, and sentenced him to death. The sentence has since been commuted to life imprisonment. If there had been a jury of even seven, which is the number here in the case of a jury trial (a majority of five to two may be accepted, after four hours deliberation), then, on the basis of the opinions of the five assessors, the accused would have been acquitted.* There has been a C.A. in Fiji since 1949, but in only one capital case has the appeal been allowed, and that was where the C.A. was "abundantly satisfied" that force had been used by certain Indian Police officers in securing alleged voluntary confessions, which was based on fresh evidence adduced in the C.A. In these enlightened days there is no excuse, even in the Colonies, for a system where the life of a subject of Her Majesty depends, finally, on a single judge's decision. If Britain wishes to retain her remaining Colonies, the Queen's subjects there must, for one thing, without delay, be afforded the system of jury trial which is available to all her subjects in Great Britain herself, and in her dominions. I trust that every member of the legal profession in England who is a member of the House of Commons, and who has this letter brought to his notice, will press hard for this reform, not only in Fiji, but throughout the other Colonies.

Auckland, N.Z. C. C. CHALMERS.

* Assessors are appointed by the court, and are not kept together during the trial, but may, and do, mix with all and sundry. There is no right of challenge in respect of them. In the case of a jury there is a right of challenge, and the court has the power to order them to be kept together.

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Boot and Shoe Repairing Wages Council (Great Britain) Wages Regulation (Amendment) (No. 2) Order, 1955. (S.I. 1955 No. 1264.) 6d.

Boot and Shoe Repairing Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1955. (S.I. 1955 No. 1265.) 6d.

Carmarthen Rural Water Order, 1955. (S.I. 1955 No. 1277.) 5d.

Control of Paper (Newspapers) (Economy) (Amendment No. 3) Order, 1955. (S.I. 1955 No. 1279.) 5d.

Exchange Control (Authorised Dealers) (Amendment) (No. 2) Order, 1955. (S.I. 1955 No. 1272.)

Exchange Control (Authorised Depositaries) (Amendment) (No. 3) Order, 1955. (S.I. 1955 No. 1273.)

London-Carlisle-Glasgow-Inverness Trunk Road (London Colney, St. Albans and Harpenden By-Pass) (Variation) Order, 1955. (S.I. 1955 No. 1260.)

Safeguarding of Industries (Exemption) (No. 6) Order, 1955. (S.I. 1955 No. 1278.) 6d.

Stopping up of Highways (London) (No. 30) Order, 1955. (S.I. 1955 No. 1261.)

Strategic Goods (Control) (Amendment) Order, 1955. (S.I. 1955 No. 1280.) 5d.

Treasury (Loans to Local Authorities) (Interest) (No. 3) Minute, 1955. (S.I. 1955 No. 1274.)

Treasury (Loans to Persons Other than Local Authorities) (Interest) (No. 3) Minute, 1955. (S.I. 1955 No. 1275.)

Wild Birds (Sundays) Order, 1955. (S.I. 1955 No. 1286.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

POINTS IN PRACTICE

Stamp Duty—VALUATION OF SHARES IN PRIVATE COMPANIES—ASSETS BASIS

Q. Our client *A* has recently entered into a deed of settlement of various shares held by our client in private limited companies whose business is that of property owners. A query has now arisen with the Controller of Stamps as to the value upon which stamp duty is to be payable, and the Controller has expressed the opinion that in view of the substantial number of shares in each company which are being transferred, their value should be related to the assets value. The relevant section would appear to be s. 74 of the Finance (1909–10) Act, 1910, and presumably the principle is that the value is that in a sale in the open market. *A* did not possess a controlling interest in most of the companies and it does not appear to us, therefore, that the basis put forward by the Controller is a sound one, but that consideration should be given to the fact that the shares settled (where appropriate) are minority shareholdings in private companies which are subject to restrictions on transfer and should be valued upon that basis.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

A. For some years now the Estate Duty Office has been seeking to value on an assets basis substantial holdings in private companies, even though not carrying control. The profession has been sternly resisting, and it is hoped that you will resist the Controller of Stamps in this case. Case law does not help very much, because in assessing the value of shares as between a willing buyer and a willing seller many factors have to be considered and the only question in each case is the weight to be attached to each, e.g., whether assets value or yield is more important. The writer only knows of one case which has been quoted by the Inland Revenue in support of their claim to value on an assets basis and that, apart from *obiter dicta*, is not really in favour of their argument. In *Re Holt, deceased; Holt* v. *Inland Revenue Commissioners* [1953] 1 W.L.R. 1488; 97 SOL. J. 876, the Inland Revenue suffered a signal defeat in their attempts to value a non-controlling interest at a figure related primarily to assets value. The judgment was merely a determination of value and did not lay down principles, but the value determined was far below that claimed by the Inland Revenue at the beginning and quite a way below the lower figure which later they put forward. In our view your conclusions are absolutely correct. We would add that, but for the Finance (1909–10) Act, 1910, s. 60 (2), a lower rather than a higher price could properly be supported where a large block of shares is concerned. *Inland Revenue Commissioners* v. *Crossman* and *Inland Revenue Commissioners* v. *Mann* [1937] A.C. 26 are of some assistance. The truth is that a shareholding, not being a controlling interest, has a value primarily determined by yield rather than assets value. It is futile for the Inland Revenue to argue, as they will, that if assets value is higher other shareholders would naturally join with the purchaser to force a liquidation and get the higher figure; the fact is that this does not happen. Having armed yourselves with a professional valuation it is best to dig in and firmly resist all arguments for valuation on an assets basis.

Anticipated Breach of Covenant by Builder—Position of Purchaser from Builder

Q. *A* is considering the purchase of a new house in the course of erection from *B*, a builder. *B* is the owner of a plot of land and he has obtained planning permission for the erection of six houses on the land. By a conveyance of 1878 a covenant was entered into by the then purchaser of this land, which then formed part of a larger piece of land, " not without the consent in writing of the grantors their heirs and assigns to build more than four messuages on the said plot of ground . . ." Two houses were erected on a part of the land in 1882. No other houses were erected until *B* commenced building operations. *B* has now completed a pair of semi-detached houses, one of which is the property that *A* is considering purchasing. No other houses are at present in the course of erection, but *B* undoubtedly intends to erect another four. *B* has not obtained consent of the grantors or their assigns, and *B's* solicitors inform us that *A* is not concerned, as until more than four houses have been erected no breach has taken place. (*a*) Are we safe in advising *A* to continue with his purchase? (*b*) If *B* does erect another house or houses will our client be affected in any way?

A. We have not been able to discover any decision of the courts providing binding authority. However, if *A* buys before other houses are commenced we do not see how he can be prejudiced (assuming he does not covenant to indemnify the vendor in respect of any breach of the covenant). When he buys there will be no breach and we see no ground on which an action can be brought against him if the vendor or another later commits a breach by building on the remainder of the land. Therefore our answers are: (*a*) We consider that such advice is safe. (*b*) No.

Churchyard—Ownership of Memorial Cross

Q.—Mrs. *A's* brother *B* is buried in a churchyard. There was erected over his grave a marble cross paid for by *B's* mother, Mrs. *B*, who is now dead. As far as can be ascertained no faculty was ever obtained for the erection of the cross. Mrs. *A* now wishes to ascertain in whom the property in the cross is vested. The only guidance I have been able to find is under the heading " Burials and Cremation " in an old first edition Halsbury. I cannot find any assistance in the Simonds edition. From the old volume it appears that during her life the property in the cross vested in Mrs. *B* and after her death it passed to *B's* heir and his heirs in the nature of an heirloom. Is this statement still good law? *B* died unmarried; will his heir be traced through his male ancestors, treating *B* as the purchaser under the rules laid down by the Inheritance Act, 1833?

A.—We have not been able to find any authoritative statement on the point raised apart from that cited in the question. On principle, however, we should have thought that it was at least arguable that the ownership in the cross would pass to the incumbent who is the owner of the freehold in the soil of the churchyard: *Maidman* v. *Malpas* (1794), 1 Hag. Con. 205. That this may be so seems implicit in provisions of s. 11 of the Open Spaces Act, 1906, where the bishop is authorised to sanction the removal of tombstones and memorials if he is of opinion that reasonable steps have been taken to bring notice of the removal to the attention of some person having a family interest in the tombstone or memorial, no mention being made of the owner or of ownership.

Conveyance by Tenant in Common of Share of Equitable Estate Subject to Mortgage

Q. Can you refer us to any precedent of a conveyance by one of two tenants in common of her share of the equitable estate to a stranger, the entirety being subject to a building society mortgage?

A. We have not been able to find a precedent. However, we see no difficulty in adapting standard forms. Examples of the two basic forms are to be found in the Encyclopædia of Forms and Precedents, 3rd ed., vol. 15, as follows: Precedent 461, where the equitable interest only is assigned; precedent 463, where the vendor tenant in common is one of the co-trustees for sale of the legal estate, and the purchaser is to become one of the co-trustees of the legal estate. In neither case does the existence of a building society mortgage complicate the transaction. In adapting precedent 461 we think it would be advisable to recite separately the document under which the tenancy in common arises, and the mortgage. We would then describe the share as being in the net proceeds of sale and rents and profits after payment thereout of all sums due under the mortgage. If the vendor is liable on the mortgage the purchaser might indemnify him. If precedent 463 is to be adopted the building society should be made a party. The recitals should be redrafted on the lines mentioned above and the assignment of the share expressed as above mentioned. The conveyance of the legal estate could be followed by a statement that it was subject to the mortgage. The building society might release the vendor tenant in common and accept a covenant from the purchaser tenant in common as in the ordinary case of a conveyance of the equity of redemption (e.g., precedent 190, cll. 2 and 3).

Rent Restriction—Farm Cottage Let to Employee—Employment Terminated—Part-time Work—Possession

Q. A client let a farm cottage to a full-time employee at a rent of 6s. per week. The employer terminated the employee's job but agreed that the tenant could stay on in the house at a rent of 10s. until he could obtain other accommodation. The employee did part-time hedging work for the employer. The employer installed electricity and increased the rent to 11s. per week. The employee ceased to do part-time work at the time or just after the increase of the rent from 10s. to 11s. (1) Did the increase of rent from 6s. to 10s. create a new contract of tenancy? (2) Did the increase of rent from 10s. to 11s. in respect of the installation of electricity create a new tenancy? (3) If either or both of the increases of rent constituted a new tenancy, then does the fact that the employee did certain part-time work for the employer after the second increase of rent enable the employer to obtain possession?

A. (1) In our opinion, the proper inference would be that a new tenancy was created. The facts would be distinguished from those of *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 K.B. 496 (C.A.) (permissive occupation by deceased tenant's daughter) because of the increase (*prima facie* irrecoverable) in rent; see also Denning, L.J.'s judgment in *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386 (C.A.). (2) The point is presumably now academic, but we would consider that the event would be regarded as a modification of the existing agreement. (3) No; the mere fact that work was done by the tenant for the landlord would not in our opinion bring the case within the provisions of the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I (*g*) (i). There appears to be very little to support an allegation that the cottage was let (as far as the present tenancy is concerned) to the tenant *in consequence of* the employment; as to which point see *Braithwaite & Co., Ltd.* v. *Elliot* [1947] K.B. 177 (C.A.), and *Royal Court Derby Porcelain Co., Ltd.* v. *Russell* [1949] 2 K.B. 417 (C.A.).

Limitation—Simple Contract Debt—What Constitutes Acknowledgment of Claim

Q. In March, 1946, *A* loaned to *B* £500. In May, 1948, *A* applied for the money and *B* denied that the money was a loan, alleging that it was the repayment of money previously loaned from *B* to *A*. In March, 1955, *A* wrote a further letter to *B* requesting repayment of the money, and *B's* reply admitted receipt of the money in 1946 but again denied that the money was a loan. In s. 23 (4) of the Limitation Act, 1939 (relating to the limitation period for simple contract debts) what precisely is meant by the phrase " acknowledges the claim "? Does it mean, in facts similar to those set out above, " admits the debt," or is *B's* reply of March, 1955, sufficient " acknowledgment of the claim " for the purpose of the section?

A. Since 1939 there is no need, as formerly with simple contract debts, for a piece of writing relied on as an acknowledgment to contain an express or implied promise to pay. Yet it must acknowledge the existence of the debt; it must be an admission that the debt is due. We do not doubt that *B's* contention that there never was any loan from *A* puts his reply quite outside the words of the Act. The mere passing of the money is all he acknowledges. That, without the colour given by the circumstances of the payment, which are just what *B* disputes, constitutes no cause of action or claim. *A's* action would not be founded, in other words, on the fact that he paid *B* £500, but on what he alleges was *B's* express or implied contract to repay it. *B* has denied, not acknowledged, that claim, i.e., cause of action. Cases in which there is an accounting situation between the parties (*Prance* v. *Sympson* (1854), Kay 678, for instance) are in a special category, but even in that case the defendant was taken to have acknowledged that a balance *might* be due from him.

NOTES AND NEWS

Honours and Appointments

Her Majesty has been pleased to approve the appointment of Sir HENLEY COUSSEY, Justice of Appeal, West African Court of Appeal, to be President of the West African Court of Appeal.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service: Mr. N. A. ST. L. CLARE, Resident Magistrate, Jamaica, to be Puisne Judge, British Guiana; Mr. D. W. CONROY, Attorney-General, Gibraltar, to be Solicitor-General, Kenya; Mr. E. A. FORREST, Legal Draftsman, Jamaica, to be Solicitor-General, Jamaica; Mr. R. WINDHAM, Puisne Judge, Kenya, to be Chief Justice, Zanzibar; Mr. D. CONS to be Magistrate, Hong Kong; Mr. J. W. CRONIN to be Resident Magistrate, Northern Rhodesia; Mr. K. A. S. PHILLIPS to be Magistrate, Hong Kong.

Miscellaneous

DEVELOPMENT PLANS

ROTHERHAM DEVELOPMENT PLAN

As briefly noted at p. 584, *ante*, the Minister of Housing and Local Government on 5th August, 1955, approved with modifications the development plan for the County Borough of Rotherham. A certified copy of the plan as approved by the Minister has been deposited at the Municipal Offices, Howard Street, Rotherham, and will be open for inspection free of charge by all persons interested between 9.30 a.m. and 11.30 a.m. on Saturdays and between 9.30 a.m. and 5 p.m. on other weekdays. The plan became operative as from 13th August, 1955, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 13th August, 1955, make application to the High Court.

NORTH RIDING DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of the North Riding of Yorkshire. The plan, as approved, will be deposited in the County Hall, Northallerton, for inspection by the public.

TRADING WITH THE ENEMY LEGISLATION

ANGLO-AUSTRIAN MONEY AND PROPERTY AGREEMENT

The Board of Trade announced on 19th August that arrangements have now been concluded in agreement with the Austrian Government for the implementation of art. 5 of the Money and Property Agreement by the release of the United Kingdom assets of deceased Austrian nationals which are subject to control by a Custodian of Enemy Property. Guidance Notes on procedure have been drawn up and may be obtained on application from the Administration of Enemy Property Department, Lacon House, Theobalds Road, London, W.C.1.

Wills and Bequests

Mr. George Herbert Espley, solicitor, of Wellington, Salop, left £8,527 (£8,177 net).

SOCIETIES

The SOLICITORS' MANAGING CLERKS' ASSOCIATION announces that a series of classes for Solicitors' Junior Clerks has been arranged to take place during the forthcoming Michaelmas and Hilary Terms. These will be held on Monday and Wednesday evenings at 6.15 p.m. in the Lord Chief Justice of England's Court, commencing on 3rd and 5th October next. Further details and applications for tickets are now available at the Offices of the Association, Maltravers House, Arundel Street, Strand, W.C.2.

OBITUARY

MR. G. J. G. BOTTELEY

Mr. Gerald James George Botteley, solicitor, of Birmingham, died on 7th August aged 82. He was admitted in 1896 and was still in practice at the time of his death.

MR. W. W. JACKSON

Mr. Walter Wilberforce Jackson, solicitor, of Croydon, died on 7th August at the age of 73. He was admitted in 1912 and had practised in Croydon throughout his career. For many years he was captain of the Croydon Cricket Club.

MR. T. W. LEWIS

Mr. Thomas William Lewis, solicitor, of Merthyr Tydfil, Glam., died on 13th August. He was admitted in 1901.

MR. R. D. NEWILL

Mr. Robert Daniel Newill, solicitor, of Wellington, Shropshire, died on 12th August, aged 66. Admitted in 1914, he was clerk to the Wellington magistrates and was a former president of the Justices' Clerks' Society.

MR. J. A. NICHOLSON

Mr. Joseph Arthur Nicholson, solicitor, of Oulton Broad, died on 30th July aged 77. He was admitted in 1900 and practised in Lowestoft until his retirement three years ago.

MR. E. S. WELCH

Mr. Eric Stanley Welch, solicitor, of Throgmorton Avenue, London, E.C.2, died on 11th August, aged 59. He was admitted in 1919.

PRINCIPAL ARTICLES APPEARING IN VOL. 99

2nd July to 27th August, 1955

For articles up to and including 25th June, see Interim Index

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